IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 3RD OCTOBER 2007 / 11TH ASWINA 1929

WA.No. 2324 of 2007

AGAINST THE ORDER IN RP.928/2006 IN OP.14165/1998 DATED 01/11/2006

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APPELLANT/PETITIONER:

KARUNA PLANTATIONS PVT.LTD,
NALLIAMPATHY,
REP. BY ITS MANAGING DIRECTOR,
PRESENT ADDRES: BOABS ESTATES PVT.LTD,
SITHARGUNDU P.O.,NELLIAMPATHY,
PALAKKAD, KERALA.

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR)
SRI.GEORGE VARGHESE KIZHAKKAMBALAM

RESPONDENTS/RESPONDENTS:
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1. STATE OF KERALA,
REP. BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF FORESTS,
GOVERNEMTN SECRETARIATE,THIRUVANANTHAPURAM.

2. CHIEF CONSERVATOR OF FORESTS,
FOREST HEAD QUARTERS, VAZHUTHAKADU,
THIRUVANANTHAPURAM.

3. CONSERVATOR OF FOREST
OLAVAKKODY CIRCLE, PALAKKAD.

4. DIVISIONAL FOREST OFFICER,
NENMARA, PALAKKAD DISTRICT.

5. THE FOREST RANGE OFFICER
KOLLAMKODE CIRCLE,PALAKKAD.

6. UNION OF INDIA,
REP. BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF FOREST AND ENVIRONMENT,
LODHI ROAD, NEW DELHI.

BY SPECIAL GOVERNMENT PLEADER MR.M.P.PRAKASH

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.2324 of 2007

Dated, this the 3rd day of October, 2007

JUDGMENT

H.L.Dattu, C.J.

This writ appeal is directed against the orders passed by the learned Single Judge in O.P.No.14165 of 1998, dated 12th September, 2006 and the Review Petition filed in No.928 of 2006, dated 1st of November, 2006.

2. At the time of hearing of this appeal for admission, the learned counsel appearing for the appellant would tell us that the petitioner is aggrieved by a portion of the order passed by the learned Single Judge in O.P.No.14165 of 1998. The portion of the order which is taken exception to by the learned counsel for the petitioner is as under:

> "Although, in the writ petition, the petitioner challenged the finding that the petitioner had encroached into 15.50 acres of forest land, the petitioner now submits that the petitioner had in fact encroached into 15.50 acres in respect of which the petitioner has filed Ext.P14 application before the 5th respondent for accepting 21.9 acres of land in exchange to this particular land which has been developed by him as a tea estate since otherwise he would lose considerably if he is to surrender that land."

3. The learned counsel appearing for the appellant would submit that at no point of time he made such a statement before the learned Single Judge and therefore, the learned Judge may not be justified in observing in the course of the order that the petitioner has in fact encroached into 15.50 acres of land in respect of which the petitioner has filed Ext.P14 application.

4. In our view, the learned Judge while saying that the petitioner has encroached into 15.50 acres of land is in view the application filed by the

petitioner (Ext.P14) before the Central Government for prior approval as required under Section 2 of the Forest Conservation Act, 1980.

5. In view of the above, we make it clear that it is not the statement of the petitioner's counsel conceding that petitioner has encroached into 15.50 acres of land, but that statement of the learned Single Judge is based on the statement made by the petitioner in Ext.P14 application filed before the Central Government.

6. With the aforesaid clarification, in our opinion, the writ appeal requires to be disposed of. Accordingly it is disposed of.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

vns